

CITY OF MUSKEGON  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES

July 8, 2003

Vice-Chairman R. Hilt called the meeting to order at 4:04 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, S. Schiller, R. Hilt, E. Fordham, R. Schweifler, D. Newsome, J. Clingman-Scott

MEMBERS ABSENT: None

STAFF PRESENT: D. Steenhagen, H. Griffith

OTHERS PRESENT: C. Holt, 160 John Ave.; J. Kolkema, 250 Terrace Point; R. & A. Portenga, 1411 Glen; C. Bridwell, 828 W. Laketon; L. Williams, 834 W Laketon; A. Majeski, Hooker DeJong; J. Funnell, Hume Home; B. Wenk, Hume Home.

R. Hilt suggested taking some of the cases that would require a simple majority first since there were only 4 members present at this time.

APPROVAL OF MINUTES

A motion that the regular meeting minutes of June 10, 2003 be approved, was made by C. Kufta, supported by R. Schweifler and unanimously approved.

S. Schiller arrived at 4:06 p.m.

J. Clingman-Scott arrived at 4:07 p.m.

The commission decided to hear the cases in order now.

OLD BUSINESS

Case 2003-10: Use Variance request to allow 955 W. Laketon Ave. to be rented as a 2-unit apartment building in the B-4, General Business, zoning district, by Michael and Caterina Holt (tabled). C. Holt provided the commission members with a quote from a general contractor for the conversion of the bathroom and back entrance so they would be handicap accessible. The quote was also for the flattening and paving of the rear portion of the property for parking. The quote came to \$37,000. There would be additional costs involved with this to cater to any business that would locate there. She provided and explained pictures of the interior of the first floor apartment to the commission members.

D. Newsome arrived at 4:11 p.m.

R. Hilt asked if she had any further contact with the realtor. C. Holt stated that she had, but it didn't help the situation any. The home was sold to her "as is". R. Hilt felt realtors need to do their job and explain everything to a prospective purchaser. He felt the applicant had explained her intent for the property to the realtor and it was the realtor's job to make sure it would be okay. He stated that the realtor is at fault and not the City codes. J. Clingman-Scott asked if the applicant had investigated the possibility of a commercial use for the property. C. Holt stated that she doesn't own any commercial properties and wouldn't know how to go about doing this. She only owns residential properties. C. Kufta asked if the applicant was willing to use the home as a single family home. C. Holt stated that by doing this she would be required to perform renovations to the home. The stairway located in the common area would need to be refigured which would make the upstairs bathroom unusable. The area would also need to be insulated and drywalled. C. Kufta stated that his opinion hasn't changed. He felt that no proof was provided showing that the home couldn't be put to a reasonable use under the current zoning. R. Schweifler asked staff what would be required to convert this into a commercial use. D. Steenhagen stated that it would need to be brought up to commercial building code requirements. R. Schweifler added that it would also need to be ADA compliant, etc. He felt the quote the applicant had provided was expensive. J. Clingman-Scott stated that there had been no attempt to market the property as a commercial use. R. Hilt stated that he would like to see realtor do better research on properties prior to selling them. Especially if they know the intent of the purchaser is.

S. Schiller stated that only the members who were present when this case was first heard last month should be voting on this.

A motion to deny the request because no proof was provided that the property at 955 W. Laketon Ave. couldn't be put to a reasonable use allowed in the B-4 zoning district was made by C. Kufta, supported by J. Clingman-Scott and unanimously approved with E. Fordham and D. Newsome abstaining.

## PUBLIC HEARINGS

Hearing, Case 2003-14: Use Variance request to allow four RV's to be parked and inhabited at 1215 E. Apple Ave. for a period of three months, by Our Redeemer Lutheran Church. D. Steenhagen presented the staff report. The property is located on the corner of Apple Ave. and Roberts St. and is an existing church building with an adjacent residence also owned by the church. The property is zoned R-1, Single-Family Residential. Churches are permitted in the R-1 district under Special Use Permit. In April, the church went before the Planning Commission to ask for a Special Use Permit in order to put an addition onto the church's building. They also asked to be allowed to park four RV's behind the residence also located on the church's property. The RV's would house workers from the 'Laborers for Christ' program who would be working on the addition and the RV's would only be on the property for a period of 3 months. The Planning Commission approved the Special Use Permit for the addition but did not feel comfortable allowing the RV's unless the City Attorney were to state that they had the authority to allow them since the Zoning Ordinance prohibits recreational vehicles from being occupied as

dwellings. Also, the subject property is zoned single-family, which does not allow camping as a permitted use. Staff asked the City Attorney for an opinion. The City Attorney's opinion was provided to the commission members stating that the Planning Commission does not have the authority to allow the RV's on the church's property since it is zoned R-1, and camping is not an allowed use in the R-1 district. Staff spoke to the applicant in the church's Special Use Permit case, Robert Storch, on May 5<sup>th</sup> and told him that the RV's were not permitted. Staff then sent out the Special Use Permit document for the church's signature, which also clearly states that no RV's are to be permitted. The document was sent to Mr. Storch, as the church's contact person on the application. In May staff became aware that the RV's were in place on the site. When the Zoning Inspector and Inspections Services staff went out on to the site, they were informed that the church was not aware that the RV's were not permitted to be there. Staff spoke to the pastor of the church and to the church's attorney. The result is the current application for a use variance to permit the RVs temporarily on the site. At the current time the RVs are still in place, pending the outcome of this request. The Inspections Services Department has been working with the church on utility issues for the RV's. The RV's had hooked into the utilities of the existing residential structure, which is not permitted. The Inspections Services Department has forwarded a letter to the church letting them know what must be done with the utilities if the use variance is approved and the RV's are permitted to stay. At this time, the Inspections Dept. has stated, "The sewer line is disconnected and will not be utilized. The cross connection device for the water supply has been installed, as of June 30, 2003. We are awaiting a test report on the device from a plumber certified to complete the test. The electrical issues have been resolved and power has been restored to the outside of the home at the request of the owner." The RV's are parked on the paved parking area between the church building and the adjoining residential building. The commission members were provided with the minutes from the April Planning Commission meeting regarding this case. Staff has received many phone calls and one e-mail which was provided to the commission members regarding this case. Gordon Peterman, president of the Sheldon Park Neighborhood Association called on behalf of the association in support of the church. Elmer Swanston, 1237 Catherine, said that the RV's are 'high dollar' rigs and he sees no reason why they can't be there. He thinks the city is giving them a hard time and can't understand why anyone would think they are an eyesore. Judy Swanston, 1237 Catherine called to say that she has no problem with the RV's. D. Steenhagen read a current e-mail from B. Grabinski (Housing Inspections) stating that the backflow prevention device was installed to the water line and it hasn't been tested by a plumber to verify it is correct.

J. Kolkema stated that she had just found out about the problem regarding the backflow prevention device at 3 p.m. They will be taking the steps necessary to have a plumber check the backflow in the next day or two. She had called some of the campsites and the pricing she received for 4 RV's to be there for 4 months ranged from \$5,200 to \$12,000. The pricing didn't include the costs associated with any hook-ups that may be needed. She gave a description of the work that the Laborers of Christ have done along with their history.

A motion to close the public hearing was made by R. Hilt, supported by J. Clingman-Scott and unanimously approved.

R. Schweifler stated that this is an unusual circumstance where the zoning ordinance is difficult to match up with reality. This is a successful program. He is concerned that the variance being

requested can't have a time limit placed on it. D. Steenhagen stated that the variance would remain with the property and they would be allowed to have RV's again if they wish. R. Hilt felt that by approving this, it would cause problems in the future. He felt RV's would be an eyesore in a residential neighborhood. J. Clingman-Scott suggested a condition that the vehicles are allowed to stay only for 3 months. C. Kufta stated that the conditions would need to be specific. He suggested having a condition that would list the license plates of the RV's that would be allowed to be there during this time. He felt the campground fees seemed expensive.

A motion that the use variance to allow four RVs at 1215 E. Apple Ave. be tabled for 90 days with the condition that they may continue the use as long as they meet the codes of the Inspections Department, was made by J. Clingman-Scott, supported by R. Schweifler and approved with C. Kufta, S. Schiller, and D. Newsome voting nay.

Hearing: Case 2003-15: Variance request to allow a shed to be constructed in front of the front building line at 1411 Glen Ave., by Roy Portenga. D. Steenhagen presented the staff report. The property is 'double fronted', and fronts on two generally parallel streets. The property contains a residence. The property is addressed off of Glen Ave., and that is where the 'front' of the home appears to face. The driveway is off Ridge Ave. The applicant would like to place a shed on the Glen Ave. side of the property and has applied for a permit to do so. The permit was denied since the shed was proposed to be located in a 'front yard'. Since the property has two frontages, there are two 'front' yards and no 'rear' yard. The home is quite wide and there does not appear to be enough room on either side of it to place a shed next to the home. In order to place a shed at all on the property a variance would be necessary since there is no yard area which is not considered (for zoning purposes) to be a 'front' yard. Staff has received one letter which was provided to the commission members regarding this case.

D. Newsome asked if staff knew what the shed would look like. D. Steenhagen stated that she didn't have any information on this and that the applicant should be able to answer this. R. Portenga provided photos of the property to the commission members. He explained the location that each picture represented on his property. He wasn't sure exactly which shed he would be having. The shed would look nice. The shed would be 8 ft. x 16 ft. The roof would be either barn style or normal.

A motion to close the public hearing was made by R. Schweifler, supported by J. Clingman-Scott and unanimously approved.

The following findings of fact were incorporated by reference of the applicants submittal: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because they have 2 "front" yards. A dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because there are only a few properties in the City like his, he has no "back" yard and unlike everyone else in the City, he can't have the extra storage (shed) that is allowed to others. Authorizing of such dimensional variance will not be of substantial detriment to adjacent properties and will not materially impair the purposes of this chapter or the public interest because his neighbor has the same situation and has a shed on

their property. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the ordinance presumes everyone has a back yard. The ordinance never envisioned a situation like his. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because there is an expense to building a shed and this would provide the convenience of being able to keep both his cars in his garage. The requested variance is the minimum action required to eliminate the difficulty because the zoning ordinance allows for 1 shed on a property which is what he would like to be able to have. There isn't enough room on his side yards for the placement of a shed.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a shed in front of the front building line at 1411 Glen Ave. be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by R. Schweifler, supported by J. Clingman-Scott and unanimously approved.

Hearing: Case 2003-16: Use Variance request to allow 828 W. Laketon Ave. to be used as a legally conforming single-family home in the B-4, General Business, zoning district, Charles & Jeanne Bridwell. D. Steenhagen presented the staff report. The subject property is located on Laketon Ave., just west of Henry St. This general area, on both sides of Laketon, is zoned B-4. There are two homes in this block with the rest of the block (north and south of Laketon) being entirely commercial in nature. The existing home is a legal nonconforming use in the B-4 district. It may continue indefinitely, and may change hands any number of times. However, if it were to be vacant for more than two years or if it were to be destroyed more than 50% then it would lose nonconforming status and could not be rebuilt as a residence under the current zoning. The property currently contains a home and an existing garage. The property owners are in the process of obtaining a home improvement loan for the property but are unable to receive approval for financing due to the nonconforming status of their home. They are asking for a use variance to permit their single-family home to become legally conforming in the B-4 district. Staff has received three phone calls on this case. Mary doesn't see anything wrong with it, "if they want to stay there with all those businesses, more power to them". The Groszskis of 764 W. Laketon have no objections to the variance. Ed Winicki owns 678 W. Laketon and he had asked where the house was. He gave no opinion.

J. Clingman-Scott asked if the variance were granted and the home were vacant for 2 years, would it still be allowed as a single family residential. D. Steenhagen stated that it would under the variance, but they could add a condition stating otherwise if they wanted to. C. Bridwell stated that he has lived in the home for 18 years. He had been turned down by 3 banks for a home improvement loan due to the zoning of his property. He would like to build a garage and have the roof of the home done. He has no ambitions to sell the home. R. Schweifler asked if there was an existing garage on the property. C. Bridwell stated that there is one connected to the house that he is using as a weight room. The garage that he would like to build would come off the alley, which would be safer than trying to back down their current driveway onto Laketon Ave. L. Williams asked about the rule that if the home were destroyed more than 50%, it couldn't be rebuilt. He also wanted to know who decides if it is destroyed more or less than

50%. D. Steenhagen read the description from the zoning ordinance. The decision is based on the cost to rebuild. If the replacement cost is more than 50% of the cost to rebuild it is considered more than 50% destroyed. J. Clingman-Scott explained the cost factor for this. L. Williams stated that he had no objections to the request.

A motion to close the public hearing was made by J. Clingman-Scott, supported by R. Hilt and unanimously approved.

J. Clingman-Scott stated that this is a tricky issue for refinancing. This is an odd case and it is based on trying to improve the home. She suggested a condition that if the house were vacant more than 2 years, it would have to conform to the current zoning for the property. C. Kufta asked if they should reference which zoning district the home would be required to follow (i.e. R-1) for the condition. D. Steenhagen stated that they would be approving the use, which is single family and not based on a particular zoning.

The following findings of fact were offered. The property could not be used (put to a reasonable use) for the purposes permitted in that zone district because it is a single family home and has been used in that manner for years. The plight is due to unique circumstances peculiar to the property and is not to general neighborhood conditions because there aren't too many homes in this zoning district. The proposed use would not alter the essential character of the area and will not materially impair the purposes of this ordinance or the public interest because the home was already being used as a single family home. The alleged hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property or by any previous owner because the home was already there and used as a single family home. The alleged hardship is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the owner would like to get a home improvement loan in order to improve his property. The requested variance is the minimum action required to eliminate the hardship because the owner would be able to improve his property and should the home be destroyed more than 50% he would be able to rebuild what was there. The use variance does not permit a use specifically identified by this Ordinance as a use excluded from the particular zone in which requested. The proposed use is not considered to be a threat to health, safety or welfare of future residents or neighbors because the home has been used as a single family home for years. The proposed use is not considered a nuisance because the home has been used for years as a single family home.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the use variance to allow a single-family home in the B-4 district at 828 W. Laketon Ave. be approved, based on the findings of fact with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) Should the home be vacant for more than 2 years, it would have to conform with the current zoning of the property, was made by J. Clingman-Scott, supported by R. Schweifler and unanimously approved.

Hearing: Case 2003-17: Variance request to reduce the front setback requirement to one foot for addition of a covered vestibule at 441 W. Western Ave., by Hooker DeJong Architects & Engineers. D. Steenhagen presented the staff report. The property is the former Brunswick bowling alley which is proposed to be redeveloped into a nightclub and restaurant. The applicant

would like to build a glass-enclosed vestibule on the front of the building in order to give customers a place to stand out of the weather when standing in line to enter the nightclub. The current front setback of the building is 10 feet, which is conforming. The applicant wishes to use 9 feet for the vestibule, which would leave a 1-foot setback. The B-3 district requires a 10-foot front setback. The Hilt Building, directly adjacent to and attached to the subject building has a similar vestibule constructed out onto the sidewalk. Photos were provided to the commission members. Staff does not know what the existing setback for that structure is. The Brunswick property is not located in a historic district, although the Frauenthal Theatre, located on the same block, is in the Selected Downtown Structures Historic District. The front door of the subject property has been removed. Staff has been told that they needed to remove the front door in order to fit a piece of equipment needed for interior renovations into the building. Staff has received one phone call from a representative of Holiday Inn and they were okay with the request.

A. Majeski displayed a larger drawing of the property for the commission members. He gave a history of the reason for this request. The building code requires 2 exits from the basement. The first would go right to the old bowling alley. The building code requires that 1 of the exits will go to the outside. This area was the most likely spot because it would have to be on the opposite side of the building from where the first exit is. There would be almost 10 ft. between the proposed vestibule and the curb.

A motion to close the public hearing was made by R. Schweifler, supported by R. Hilt and unanimously approved.

R. Hilt felt that this would create more congestion in the area. The Hilt building already has a vestibule which causes the sidewalk in front of it to get congested. He felt that this nightclub would create more foot traffic and congest the sidewalks further if they were granted the variance. J. Clingman-Scott didn't see this as a problem. She felt foot traffic was a good thing. She felt that the building code was creating part of this since 1 of the exits is required to lead to the outside. By denying the request would create an undue burden on the owner. E. Fordham stated that he is a building contractor and has been in this building. He doesn't know how they'd be able to meet the building code requirements without the variance. R. Schweifler felt the space would be adequate. C. Kufta asked staff if signage would be allowed to intrude on the portion of the sidewalk that is left. D. Steenhagen stated that any encroachments would need to be approved by the City Commission.

The following findings of fact were incorporated by reference of the applicant's submittal: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the existing building extends under the sidewalk, which they plan to utilize for a second egress stair out of the basement. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the adjacent neighbor (the Hilt Building) uses the walk for a covered entry/vestibule. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the existing walk in front of the

building is 20 ft. wide (10 ft. is in the City road ROW). The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the current building basement extends under the existing sidewalk beyond the required setback line and they would like to use this space for a second stair means of egress from the basement. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because being able to use the existing space below the sidewalk and providing a covered entry for guests. The requested variance is the minimum action required to eliminate the difficulty because they are only requesting to go out as far as the existing basement extends.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the front setback to one foot at 441 W. Western Ave. be approved, based on the findings of fact with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by J. Clingman-Scott, supported by R. Schweifler and approved with D. Newsome voting nay.

The meeting was relocated to conference room 106 at 5:20 p.m.

R. Schweifler left at 5:20 p.m.

Hearing; Case 2003-18: Variance request to allow a gazebo to be constructed in front of the front building line at 1244 W. Southern Ave., by the Hume Home. D. Steenhagen presented the staff report. The property is located at the corner of Lakeshore Dr. and Southern Ave., and contains a nursing home. There is quite a bit of wooded lawn area on the grounds of the property. The building is set back quite a distance from both Lakeshore Dr. and Southern Ave. The applicant would like to construct a gazebo on the west side of the building to give the residents of the home a gathering place. Because the property is on a corner, there are two frontages and therefore two 'front' yards. The proposed gazebo is in front of the front building line for both frontages. If the gazebo were to be moved further north, it would be behind the front building line for the Southern Ave. frontage, but still in front of the front building line for the Lakeshore Dr. frontage. If the gazebo were to be placed on the other (east) side of the building, it would still be located in a 'front' yard since that side of the property fronts on Southern Ave. as Southern curves around. The only place on the property where the gazebo could be legally placed is on the north side of the building, in closer to the building next to the drive area. The applicant has stated that they wish the gazebo to be placed as proposed so that it can be seen out of the office window allowing staff to 'keep an eye' on the residents using it. In 2000 the Hume Home received a variance to construct a second freestanding sign. They currently have free-standing signs at the corner of Lakeshore Dr. and Southern Ave. and the corner of Southern Ave. and Montgomery Ave., where Southern Ave. curves around toward Lakeshore Dr. Staff has received many phone calls regarding this case. Barbara Bartow, 1284 Lakeshore is happy to have them build a gazebo. Alice Dempsey, 1248 Lakeshore Dr., Apt. 234, said that it is just fine to have a gazebo on the property. Marge Soderstrom, Lakeshore House, approves very much. Guy and Margaret Benham, Lakeshore House, have no objection to the gazebo. Regan Lunquist, 1262 Lakeshore Dr., is in favor of the request. Tony Durn, 1249 Lakeshore Dr., representing Apts. 114 and 125, thinks the gazebo sounds great. Mark Porter said that he has no problem with



the gazebo. It wouldn't hurt anything and would benefit the residents of the nursing home. Violet Tourney had no problem with this request.

J. Funnell went over the different possible location for the gazebo and why the locations wouldn't work. The gazebo would be of a good quality and would be made with steel (for support) and vinyl siding. A. Majeski added that the proposed location of the gazebo would work best for the residents because they wouldn't have to walk as far to get to it.

A motion to close the public hearing was made by R. Hilt, supported by J. Clingman-Scott and unanimously approved.

D. Newsome asked for clarification of the placement of the walkway to the gazebo. B. Wenk explained they had looked at having some steps, but with some of the residents having a hard time walking and some using walkers, they decided to go with a flat surface that would lead to the gazebo.

The following findings of fact were incorporated by reference of the applicant's submittal: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the Hume Home is placed back on the property and they have a very large yard. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the property is unique since it has 3 frontages and the adjacent property owners don't have this. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the gazebo will enhance the property and wouldn't be located near any other structures. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the placement would be about 6 ft. in front of the front line of the building structure. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because this would provide convenience and pleasure of the residents. The requested variance is the minimum action required to eliminate the difficulty because the building is set farther back from the street.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a gazebo in front of the front building line at 1244 W. Southern Ave. be approved, based on the findings of fact with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by C. Kufta, supported by J. Clingman-Scott and unanimously approved.

## OTHER BUSINESS

Informational Materials – D. Steenhagen asked the commission members if they had received this information and had a chance to look it over. The commission members stated that they had and D. Newsome stated that he had some corrections that he would get to D. Steenhagen.

Future ZBA Packets – D. Steenhagen stated that now the maps and findings of fact information that the applicant submits are scanned into the packets. She asked if any of the members would prefer to get their packets through e-mail. The only time something would be mailed would any plans that were submitted on larger paper. The commission members that would like it e-mailed gave D. Steenhagen their e-mail addresses.

Bylaws – C. Kufta would like to see this discussed further at the next meeting. D. Steenhagen stated that she would enclose the information in the commission members' packets for the next meeting.

There being no further business, the meeting was adjourned at 5:30 p.m.

hmg  
7/8/03